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RECORD.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,666

CIVIL.

M. M. MEREDITH, APPELLANT,

vs.

JOHN DEERE PLOW COMPANY OF MOLINE, ILLINOIS, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE ~~NORTHERN~~ SOUTHERN DISTRICT OF IOWA.

Printed Record

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INDEX

	Original	Print
Petition	2	1
Appendix A	6	6
Appendix B	6	7

	Original	Print
Motions of Defendant to Dismiss, Motion of Defendant to Strike, and Motion of Defendant for more Specific Statement	7	7
Motion of Defendant to Dismiss	7	7
Motion of Defendant to Strike	8	9
Motion of Defendant for more Specific Statement	9	10
Memorandum and Order of District Court sustaining Motion of Defendant to Dismiss and dismissing Cause, August 7, 1956	10	11
Notice of Appeal	12	12
Docket Entries in United States District Court	13	13

[fol. 2] Petition

(Filed in U. S. District Court on March 9, 1936)

In the District Court of the United States
for the Southern District of Illinois,
Northern Division

M. M. Meredith, Plaintiff,
No. P1839 vs. Civil Action
John Deere Plow Co. of Moline, Ill., Defendant.

1.

The amount involved in this action exceeds three thousand dollars; and there is diversity of citizenship between the parties.

Plaintiff is an individual who lives at Atlantic, Iowa.

Defendant is a corporation with its principal place of business at Moline, Ill.

2.

In June 1924, defendant, as one member, and two certain retail stores, as the other member, were associated as the sole members of a certain business enterprise.

One of these stores was located at Atlantic, Iowa, and was identified by the name "C. P. Meredith, Atlantic, Iowa."

The other one of these stores was located at Griswold, Iowa; and was identified by the name "C. P. Meredith Griswold, Iowa."

3.

The objective of this business enterprise was to distribute the John Deere brand of farm implements among certain

limited class of individuals, to wit:—among such farmers as lived or farmed within the trade territories of said two stores.

As used in this petition, the term "distribute" identifies and includes acts of popularizing, selling, delivering, and servicing.

4.

In order for said business enterprise to function in a manner acceptable to both of its members, it was essential for each member to perform certain acts, consistently and faithfully.

Hereinafter said acts are termed "membership duties."

The said membership duties of defendant differed from the said member hip duties of these two stores.

5.

In June 1924, each of said members was performing its said membership duties consistently and faithfully, and said business enterprise was functioning in a manner acceptable to both of them.

[fol. 3] Also, in June 1924, defendant was urging its fellow member, said two stores, to make certain radical and fundamental changes in their long established methods of conducting their businesses.

Said stores were not obligated to make said changes; and defendant did not claim that they were.

In Appendix A, attached hereto, plaintiff has listed said proposed changes; and plaintiff hereby makes said Appendix A a part of this petition.

7.

Also, in June 1924, at Griswold, Iowa, defendant made a certain oral offer to plaintiff.

8.

Plaintiff was a third party. He owned no part of either one of said two stores. He was not a party to any agree-

ment or other arrangement by which said business enterprise had been created or in accordance with which it then was operating. He had taken no part in the making of any such agreement or other arrangement. He was not familiar with such agreement or other arrangement.

Defendant was aware of these facts at the time it made its said offer.

9.

Defendant's said offer was as follows:—Defendant offered that if plaintiff would advise said stores to make said proposed changes, and if plaintiff would exercise his authority and influence in such manner as would tend to cause said stores to make said proposed changes; then in exchange for plaintiff's performance of said services, defendant, throughout a certain definite and specified period of time, would continue to perform, consistently and faithfully, the aforesaid membership duties, which, as before alleged, defendant at that time was performing, consistently, and faithfully.

10.

In Appendix B, attached hereto, plaintiff has delineated the period of time specified in defendant's said offer; and plaintiff hereby makes said Appendix B a part of this petition.

11.

In June 1924, at Griswold, Iowa, plaintiff duly accepted defendant's said offer, orally.

12.

After said exchange of offer and acceptance had taken place, defendant represented to plaintiff that it held the [fol. 4] following belief:—defendant professed to believe that said exchange had had the effect of creating an agreement between itself and plaintiff—an agreement which embodied the provisions of defendant's said offer.

13.

Defendant at that time also urged plaintiff to proceed and to act thereafter upon the assumption that such agreement existed; and upon the assumption that defendant's future actions would be in accord with the provisions of said presumed agreement and with the provisions of its said offer.

14.

Thereafter plaintiff did proceed and act upon said two assumptions. Plaintiff would not have proceeded and have acted thereafter upon these two assumptions if defendant had made materially different statements to him at that time; or if defendant at that time had failed or refused to commit itself regarding said matters.

15.

Albert Ellsworth of Omaha, Neb. and L. R. Galiher of Atlantic, Iowa were the individuals who conducted said negotiations for defendant.

16.

Plaintiff has duly performed the services specified in defendant's aforesaid offer.

17.

Performance of said services caused plaintiff trouble and inconvenience. At the time plaintiff accepted defendant's aforesaid offer, plaintiff was under no prior obligation to perform said services. It was entirely ethical and proper for plaintiff to perform said services.

18.

The period of time specified in defendant's aforesaid offer has not yet expired. Despite that fact, defendant now is failing to perform any of its aforesaid membership duties.

19.

Defendant's said failure is inflicting loss and injury on plaintiff.

20.

Wherefore plaintiff charges:—

That the aforesaid exchange of offer and acceptance did, in fact, create an agreement. That, moreover, defendant is estopped from claiming that said exchange did not have the effect of creating an agreement. That said agreement [fol. 5] is legally valid. That plaintiff has duly performed his part of said agreement. That, at the present time, defendant is engaged in breaking its part of said agreement. That by its said breach, defendant, at the present time, is inflicting loss and injury upon plaintiff.

21.

One of defendant's aforesaid membership duties is to abstain from employing, or having any connection with, any method of distributing the John Deere brand of implements, among such farmers as live or farm within the trade territories of said two stores, other than a method which utilizes, for that purpose, said business enterprise, composed of defendant and said two stores.

22.

Another one of defendant's aforesaid membership duties is to make a certain accounting to and settlement with its fellow member, said two stores.

Said accounting and settlement is to be for all activities of a certain nature, in which defendant has been engaged or in any way connected with, and for which defendant has not made an accounting to and settlement with said two stores.

Said activities are all activities in any way connected with the distributions of the John Deere brand of farm implements among such farmers as live or farm within the trade territories of said two stores.

23.

Plaintiff asks that defendant be required to perform said two duties, above described, forthwith; and also be required to continue performing, consistently and faithfully, said duties throughout the period specified in defendant's said offer of June 1924.

24.

Plaintiff further asks that he be granted any and all other or additional rights and remedies to which he may be entitled.

M. M. MEREDITH,
Plaintiff.

301 West Sixth St.
Atlantic, Iowa.

[fol. 6] Appendix A.

The said changes which defendant was proposing to the said two stores were the following:—

(a) Said stores should gradually, but as rapidly as practicable, discontinue distributing other brands of farm implements which they then were distributing, and should, instead, devote all the time and efforts which they devoted to distributing implements—should devote said time and efforts to distributing the John Deere brand exclusively.

(b) Said Griswold store should increase the importance of the implement department of its business and should diminish the importance of other departments of its business.

(c) Said stores should make affirmative efforts calculated to merge their identities with the identity of the John Deere brand of implements to the end that the public eventually would come to regard these stores as being primarily "John Deere stores."

Appendix B.

The period of time specified in defendant's said offer of June 1924 was that period of time which would elapse prior to the occurence of one or other of the following three events:—

(a) Notification of said two stores by defendant, in good faith, to the effect that it intended to engage no longer in the occupation of distributing the John Deere brand of implements among such farmers as lived or farmed within the trade territories of said two stores.

(b) Notification of defendant by said two stores, in good faith, to the effect that they intended to engage no longer in the occupation of distributing the John Deere brand of implements among such farmers as lived or farmed within the trade territories of said two stores.

(c) Establishment by defendant that said two stores, or either one of them, had been seriously remiss or otherwise guilty of major fault in the performance of their, or its, membership duties.

[fol. 7] (Motion of Defendant to Dismiss, Motion of Defendant to strike and Motion of Defendant for more Specific Statement)

(Filed in U. S. District Court on April 9, 1956)

In the United States District Court
For the Southern District of Illinois,
Northern Division.

M. M. Meredith, Plaintiff,
File No. P-1839 vs. Civil Action
John Deere Plow Co. of Moline, Ill., Defendant.

Motion to Dismiss.

Comes now the defendant, John Deere Plow Co. of Moline, Ill. and moves the Court, as follows:—

1. To dismiss the plaintiff's complaint and the above entitled action for the reason [the] the complaint or petition

fails to state a claim or cause of action against the defendant upon which relief can be granted.

2. To dismiss the complaint and the above entitled cause of action for the reason that the complaint or petition is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading.

3. To dismiss the complaint and the above entitled action for the reason that said complaint or petition fails to comply with Rule 8 (a) and Rule 8 (e) of the Federal Rules of Civil Procedure which require that the complaint shall contain a "short and plain statement of the claim, showing that the pleader is entitled to relief", and the further requirement that the complaint "shall be simple, [consise] and direct."

4. To dismiss plaintiff's complaint or petition for the reason that the cause of action sought to be alleged in plaintiff's complaint or petition herein has been fully and completely considered, decided and adjudicated against the plaintiff on substantially the same pleading. That plaintiff now seeks a new forum in attempting to re-litigate the identical issues decided in the two previous cases between the same parties.

See Meredith vs. John Deere Plow Co. of Moline, Ill. 89 Fed. Supp. 787 (March 30, 1950); affirmed by the United States Court of Appeals for the Eighth Circuit, 185 Fed. 2nd 481 (December 20, 1950); certiorari denied by the Supreme Court in 341 U. S. 936 95 L.Ed. 1364, 71 S. Ct. 856 (May 21, 1951.)

[Vol. 8] Also Meredith vs. John Deere Plow Co. of Moline, Ill., order of Dismissal by the District Court of the United States for the Southern District of Iowa, Western Division Civil 1-116 (Dec. 3rd, 1952); [affired] by the United States Court of Appeals for the Eighth Circuit in 206 Fed. 2nd 196, (July 31, 1953); certiorari denied by the Supreme Court in 346 U. S. 223, 98 L.Ed. 399, 74 S.Ct. 223 (November 30, 1953).

Also Meredith vs. John Deere Plow Co. of Moline, Ill et al., in the United States District Court for the Southern District of Iowa, Western Division, Civil 1-216, which plaintiff dismissed January 3, 1956, and Order of Dismissal entered January 13, 1956, immediately after plaintiff's Motion to Remand and before submission of defendant's Motion to Dismiss.

The Court in its order overruling the Motion to Remand took "judicial notice of the two previous actions instituted by plaintiff against the John Deere Plow Co. seeking redress for alleged breach of unilateral contract or agreement terminable at will and impossible of enforcement, and dismissed on orders by this court. See 185 F. 2nd 481, 206 F. 2nd. 196.

Continuing the Court said:—

"To attempt to differentiate the basic grounds existing, if any, between the present and the former proceedings or to give cognizance to the joinder of two citizens of Iowa as defendants other than mere nominal parties to the action would make a mockery upon the jurisdictional requirements herein."

Motion to Strike

Comes now the defendant, John Deere Plow Co. of Moline, Ill., and subject to the ruling of the Court upon the Motion to Dismiss moves the Court to strike each and all of the following matters for the reason all as hereinafter set forth:—

1. To strike all of plaintiff's complaint or petition, for the reason that the same is redundant, immaterial, impertinent and scandalous matter and violates the provisions of Rules 6 and 10 of the Rules of Civil Procedure for the District Courts of the United States and for the further reason that the complaint or petition of the plaintiff is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading.

2. Subject to the ruling of the Court upon the previous portion of the Motion to Strike, this defendant moves the Court to strike each and every paragraph in said complaint [to] 9] of petition, and including Appendix A and B thereto attached, and that this motion shall apply to each and every paragraph and appendix separately, all for the reason that each of said paragraphs and appendix contain and are redundant, immaterial, impertinent, and scandalous matters and violate the provisions of Rules 8 and 10 of the Rules of Civil Procedure for the District Court of the United States.

Motion for More Specific Statement.

Comes now the defendant, John Deere Plow Co. of Moline, Ill. and subject to the ruling of the Court upon the defendant's Motion to Dismiss and defendant's Motion to Strike and as hereinafter set forth, moves the Court to require the plaintiff to make his complaint and petition more specific in each and all of the following matters, as hereinafter set out, for the reason that the complaint of the plaintiff is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading:

1. That the plaintiff be required to set out whether or not the oral agreement claimed in plaintiff's petition was the only contract entered into with this defendant and if not set forth the terms of any such contract or contracts and if in writing to set out a copy or copies of any such contract or contracts.

2. That the plaintiff be required to state the date upon which he claims this defendant notified him or said stores that it would cease to perform its duties for said business enterprise and if such notice was in writing to set out a copy thereof.

3. That plaintiff be required to state the date upon which he claims the defendant ceased and refused to per-

form its duties for said business enterprise as alleged in palintiff's complaint or petition.

L. D. WILSON (by R. L. B.)

ROBERT L. BARRETT,
Moline, Ill. 1325 Third Avenue.

ABEL V. SHOTWELL,
1032-1042 Omaha National
Bank Bldg.
Omaha, Neb.

RAYMOND A. SMITH,
301-308 Park Building
Council Bluffs, Iowa.

Attorneys for Defendant.

[fol. 10] (Memorandum and Order of District Court sustaining Motion of Defendant to Dismiss and dismissing Cause)

(Filed in U. S. District Court on August 7, 1956)

United States District Court
Southern District of Iowa
Western Division.

M. M. Meredith, Plaintiff,
vs.
John Deere Plow Co. of Moline, Ill., Defendant.

This is the fourth action by the plaintiff against the defendant on the same general subject matter. The first was dismissed for failure of the complaint to state a claim upon which relief could be granted (89 Fed. Supp. 787) and that action was affirmed on appeal by the Eighth Circuit (185 F. 2nd. 481). The second was, likewise, dismissed for failure of the complaint to state a claim upon which relief could be granted (the Federal District Court's opinion is unreported) and that action was again affirmed by the Eighth Circuit (206 F. 2nd 196). Certiorari was applied for and denied by the Supreme Court in each of those cases (341 U.S. 936 and 346 U.S. 223). The third complaint (No. 1-216 in the District Court for the Southern District of Iowa), involved the same subject matter and, after the

overruling of the motion to remand to the State court from which removed, was dismissed by the plaintiff January 13, 1956. This action, the fourth one, was commenced in the Southern District of Illinois, Northern Division, and, on motion of defendant under Section 1404 (a), Title 29, U.S.C., was transferred to this Court.

Defendant has filed a motion to dismiss for failure of the complaint to state a claim upon which relief can be granted, and a motion to strike the complaint as redundant and immaterial and violative of Rule 8 and 10 of the Federal Rules of Civil Procedure, and, in the alternative, a motion for a more definite statement. These are the matters now before the Court, which, as well as the briefs of the parties, have been fully considered.

Even without the fortification of the prior decisions, it is crystal clear that this complaint attempts, by way of assumption and conclusion, to allege a contract (and its breach) that is void and unenforceable for (1) uncertainty, (2) lack of mutuality, and (3) because expressly, as alleged, terminable at will. Hence, the complaint fails to state a claim upon which relief could be granted.

It Is Therefore Ordered By The Court that defendant's motion to dismiss be, and is hereby, sustained and this action is dismissed. Done at Des Moines, Iowa, this 7th [fol. 11] day of August 1956.

CHARLES E. WHITTAKER,
United States Circuit Judge.
(By Assignment).

[fol. 12] Notice of Appeal

(Filed in U. S. District Court on September 4, 1956)

In the District Court of the United States
for the South Half of the State of Iowa
Western Division.

M. M. Meredith, Plaintiff,
File No. 1-225 vs. Civil
John Deere Plow Co. of Moline, Ill. Defendant.

The plaintiff in this action, M. M. Meredith, 301 West Sixth St., Atlantic, Iowa, Hereby gives notice that he

appeals to the eighth Circuit Court of Appeals from the order of this District Court which was entered of record on August 7th, 1956.

Said order is an order dismissing plaintiff's compiaint for the reason that same fails to state a claim on which relief can be granted.

M. M. MEREDITH,
Plaintiff.

M. M. Meredith, plaintiff,
301 West Sixth St.
Atlantic, Iowa.

Copies of Notice of Appeal mailed to Raymond A. Smith, 301-8 Park Bldg., Council Bluffs, Iowa, to Abel V. Shotwell, 1037 Omaha National Bank Bldg., Omaha, Nebr., and to Robert L. Barrett and L. D. Wilson, 1325 3rd Ave., Moline, Illinois, Attorneys for defendant, at Council Bluffs, Iowa, September 4, 1956.

E. E. POSTON, Clerk
U. S. District Court.
By Gladys Gretzer, Deputy Clerk

Filed in U. S. District Court September 4, 1956.

[fol. 13] (Relevant Docket Entries in United States District Court)

United States District Court
Southern District of Iowa
Western Division

M. M. Meredith, Plaintiff.
No. 1-235 vs. Civil
John Deere Plow Co. of Moline, Ill., Defendant.

1956
June 28 Filed Transcript of Proceedings from Southern District of Illinois, Northern Division, with original file containing —
a. Petition filed Mch. 9, 1956
b. Summons with Return filed Mch. 22, 1956

c. Motion to Dismiss, Motion to Strike, and Motion for More Specific Statement filed Apr. 9, 1956

d. Motion for Change of Venue filed Apr. 9, 1956

e. Copy of Docket Entries

f. Order of Transfer filed June 26, 1956

July 24 Filed copy of letter addressed to counsel, notifying them that pending motions to dismiss, to strike and for more specific statement, be submitted on brief written statements to be filed on or before August 7, 1956.

Aug. 4 Filed Memorandum Brief and Statement on behalf of defendant in support of Motions to Dismiss, to Strike and for More Specific Statement

" 6 Filed plaintiff's Argument objecting to defendant's Motion to Dismiss.

" 7 Filed Memorandum and Order of Dismissal. Whittaker, J. (2 OJ 351,352) Notice to counsel 8/8/56.

" 7 Entered Dismissal at plaintiff's costs. Whittaker, J. (2 OJ 352) Notice to counsel 8/8/56.

Sept. 4 Filed Notice of Appeal. Copies of Notice of Appeal mailed to Raymond A. Smith, 301-8 Park Bldg., Council Bluffs, Iowa; to A. V. Shotwell, 1037 Omaha National Bank Bldg., Omaha, Nebraska; and to Robert L. Barrett and L. D. Wilson, 1325 3rd Ave., Moline, Illinois, Attys. for Defendant. At Council Bluffs, Iowa, September 4, 1956. E. E. Poston, Clerk U. S. District Court, by—/s/ Gladys Gretzer, Deputy Clerk.

[fol. 14]

Sept. 4 Filed Appeal Bond. $250.00 cash as surety.

" 11 Filed Designation of Contents of Record on Appeal.

" 12 Filed Designation of Additional Portions of Record.

LIBRARY No. 201
SUPREME COURT, U.S.

Supreme Court of the United States

No. 15,666

M. M. MEREDITH,
Petitioner and Appellant below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL.,
Respondent and Appellee below.

PETITION FOR A WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

M. M. MEREDITH,
301 West Sixth St.,
Atlantic, Iowa,
Petitioner.

INDEX

SUBJECT INDEX

	Pages
Petition for a Writ of Certiorari	1
Summary Statement of Matter Involved	1-2
Jurisdiction	2
Questions Presented for Review	2
Complaint of Petitioner	3
Argument	4
Conclusion	8
Appendix: A	9
Appendix B	12

CASES CITED

Dickinson, vs. Colgrove, 100 U. S. 578, 580	3,5
Gilman vs. Rives, 10 Peters 298-301	3,6
Standard Oil Co. vs. Vreland, 204 Ia. 1340, 224 N. W. 467	2,5

STATUTE CITED

28 U. S. C. Sec. 1254 (1)	2

CONSTITUTION CITED

Section 1 of the Fourteenth Amendment	2,3

Supreme Court of the United States

No. 15,666

M. M. MEREDITH,
Petitioner and Appellant below

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL.,
Respondent and Appellee below.

PETITION FOR A WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

1.

On August 7, 1956, petitioner's complaint was dismissed by the United States District Court for the South-

ern District of Iowa, Western Division. Reason: Said complaint failed to state a case upon which relief could be granted (R11, R12).

Said dismissal was affirmed by the United States Court of Appeals for the Eighth Judicial Circuit. Date of decree and entry: May 7, 1957. Reasons: (a) The agreement alleged in said complaint possessed obvious congenital weaknesses. (b) Dismissal of previous complaints had settled the controversy.

On May 31, 1957, Petition for Rehearing was denied. Petitioner had thought issue of estoppel had been overlooked.

On June 11, 1957, order was issued, staying issuance of mandate, for thirty days from and after that date; and until final disposition in case Petition for Writ of Certiorari was properly filed.

Jurisdiction to review this decision of the Eighth Circuit Court of Appeals is believed to be conferred upon this Court by 28 U. S. C. Sec. 1254 (1).

2.

Questions presented for review:

(a) Said decision seems to violate one of Petitioner's Constitutional rights the one due to the last clause in Section 1 of the Fourteenth Amendment.

(b) On an important point of Iowa law, this decision seems to conflict with the decision of the Iowa Supreme Court, made in *Standard Oil Co. vs. Vedland*, 204 Ia. 1340, 224 N. W. 467.

(c) On the doctrine of estoppel, this decision seems to conflict with *Dickinson vs. Calgrove*, 100 U. S. 578, 580.

(d) Holding that dismissal of previous complaints had settled the controversy—said holding seems to conflict with *Gilman vs. Rives*, 10 Peters 298, 301.

(e) It seems that when adjudicating the validity of this complaint, the Eighth Circuit Court of Appeals failed to view it in that aspect most favorable to its validity.

3.

The last clause in Section 1 of the Fourteenth Amendment states: "[No State shall] deny to any person within its jurisdiction the equal protection of the laws."

4.

Petitioner alleged the following in said complaint:

Respondent offered to continue performing certain acts throughout a specified period of time, if petitioner, in exchange, would perform certain services. Petitioner accepted. Petitioner now has performed the specified services, which performance caused him trouble and inconvenience. The period of time specified in respondent's said offer has not yet expired. Nevertheless, respondent now is failing to perform its promised acts. Said failure is inflicting loss and injury on petitioner. Petitioner is a resident of Iowa. The exchange of offer and acceptance occurred in Iowa. Petitioner's services were performed in Iowa. Respondent promised to perform its said acts in Iowa (R1 to R5).

Subsequently to said exchange of offer and acceptance, respondent urged petitioner to proceed and act there-

after upon the assumption that respondent's future actions would accord with the terms of its said promise. Petitioner thereafter did proceed and act on that assumption. He would not thus have proceeded and acted except for respondent's aforesaid subsequent urgings (R3, R4).

There is diversity of citizenship between petitioner and respondent; and the amount involved exceeds three thousand dollars (R1).

II.

(a)

Petitioner asks the Court to take judicial notice that the following is a fact: Iowa habitually accords to the generality of persons within its jurisdiction the following protection, to wit: It enforces for them promises for which the promisors have received from the promisees, in exchange, nothing other than legal consideration.

Petitioner asks the Court to accept the following to be a self-evident fact: In his complaint, petitioner alleged he had exchanged legal consideration for respondent's promise (R3, R4).

Petitioner asks the Court to accept the following to be a fact: The Eighth Circuit Court of Appeals, when making this decision, was acting in the capacity of an Iowa Court.

Petitioner submits: If the above three propositions are true, then petitioner, by said decision, was denied by Iowa equal protection of the laws.

(b)

In this case, the Eighth Circuit Court of Appeals, in effect, held: The circumstance that the promisee has exchanged legal consideration for the promise in question—said circumstance is not a material factor in determining the legal validity of an Iowa agreement.

In *Standard Oil Co. vs. Veeland*, 204 Ia. 1340, 224 N. W. 467, the Supreme Court of Iowa, expressly, held: The circumstance that the promisee has exchanged legal consideration for the promise in question—said circumstance is the decisive factor in determining the legal validity of an Iowa agreement.

(c)

In *Dickinson vs. Oldgrove*, 100 U. S. 578, 580, the Supreme Court of the United States, in effect, held: The purpose of estoppel is to prevent, under certain conditions, the owner of a right from exercising the same. It set out those conditions as follows: "The vital principle is, he who by his language or conduct leads another to do what otherwise he would not have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

In his complaint, petitioner alleged that he now is suffering loss and injury because of the disappointment to his expectation—his expectation that respondent's present actions would accord with its said promise. Also he alleged: After the exchange of said offer and acceptance, respondent urged petitioner to act thereafter upon the assumption that respondent's future actions would accord with its said promise. Petitioner thereafter did

act upon said assumption. Which he would not have done except for those subsequent urgings (R3, R4).

Petitioner submits: According to Dickinson vs. Colgrove, supra, the Eighth Circuit Court of Appeals should have prevented respondent from exercising its right—its right to act in contrariety to its promise.

(d)

The Eighth Circuit Court of Appeals held that dismissal of previous complaints had settled the controversy.

In *Gilman vs. Rives*, 10 Peters 298, 301, the Supreme Court of the United States held: "* * * a judgment that a declaration is bad in substance * * * can never be pleaded as a bar to a good declaration for the same cause of action. The judgment is, in no just sense, a judgment on the merits."

Petitioner submits: By implication, Court thereby holds that a plaintiff is entitled to have his presumed grievance adjudicated on its merits. Expressly, the Court thereby holds that dismissal of a complaint, because same is defective, is not such adjudication.

Petitioner submits: According to said holding, any rule of procedure which would leave it to the discretionary power of the Court whether or not to grant the right of adjudication of a grievance on its merits—said procedure would be Unconstitutional. Because it would be delegation of legislative power by Congress to Courts. Deprivation of rights or granting of rights is legislative power. Judicial power is limited to defining, vindicating, and protecting rights.

Petitioner further submits: The cause of action alleged in the present complaint, is an entirely different cause of action from the one alleged in the previous complaints.

(e)

Prior to the adjudication made in this case, no Court ever had evaluated the legal significance of petitioner's alleged performance of the services which is alleged in this complaint.

The Eighth Circuit Court of Appeals based the reasons for its holding entirely upon certain information which it possessed. Said information could not be obtained from the allegations made in this complaint.

But petitioner, in his brief and in prior complaints, which had been dismissed, had made statements containing said information. The Court considered the contents of said statements to be a part of its records; and, therefore, in effect, to constitute a part of the present complaint.

Petitioner submits: Said information—the contents of said statements—was not a part of the Court's records. Because: Said statements never had been made under oath; petitioner never had been subjected to cross-examination; the accuracy of said statements never had been ascertained or certified to by any Court; and, finally, petitioner possesses a certain right with regard to said statements—a right which is inconsistent with the theory that the contents of said statements form a part of the Court's records. Petitioner has the right to modify said statements or to retract them entirely. If the contents

of said statements were a part of the Court's records, then a private individual would have the right to alter or obliterate the records of a Court.

Petitioner submits: Said information, not being a part of the Court's records; and not being ascertainable from the allegations of the complaint, was not a part of the contents of the complaint. It was extraneous information.

Petitioner submits: The employment of extraneous information, to the disadvantage of the complaint, constitutes failure to view the complaint in that aspect most favorable to its validity—a failure which is contrary to a rule of interpretation that is mandatory when the validity of a complaint is challenged.

Wherefore your petitioner prays that a Writ of Certiorari issue under Seal of this Court, directed to the Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in the case on its docket No. 15,666, M. M. Meredith vs. John Deere Plow Co. of Moline, Ill., to the end that same may be reviewed and determined by this Court as provided for by the Statutes of the United States; and that judgment herein of said Court of Appeals for the Eighth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

M. M. Meredith,
301 West Sixth St.,
Atlantic, Iowa,
Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 15,666

M. M. Meredith,

Appellant,

vs.

John Deere Plow Company of Moline, Illinois,

Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

[May 7, 1957]

M. M. Meredith, pro se, for Appellant.

Abel V. Shotwell and Raymond A. Smith (L. D. Wilson and Robert L. Barrett with them on the brief), for Appellee.

Before JOHNSEN, VOGEL and VAN OOSTERHOUT, Circuit Judges.

Per Curiam.

The District Court dismissed a suit by appellant to have an alleged contract recognized and enforced, on the ground that the complaint failed to state a claim upon which relief could be granted.

The contract provisions controlling of the litigation have twice previously been before us, in suits brought by appellant against appellee, and have been held by us to be without enforceability under Iowa law and for that reason to be incapable of supporting a claim upon which relief could be granted.

In the first suit, *Meredith v. John Deere Plow Co. of Moline, Illinois*, 8 Cir., 185 F. 2d 481, 482, we held that an action for alleged breach of the contract could not be maintained by appellant, because the effect of particular provisions of the agreement was to make the relationship between appellant and appellee terminable "by either party at will without incurring liability for damages to the other."

In the second suit, *Meredith v. John Deere Plow Co. of Moline, Illinois*, 8 Cir., 206 F. 2d 196, we affirmed the trial court's dismissal of an attempt by appellant to obtain an accounting under the contract, upon the same ground. We pointed out that our previous opinion had held the agreement to be one that was terminable at will and added, for appellant's benefit, in his pro se litigation attempt, the following: "The District Court, in dismissing the complaint in the instant action relied upon the former decision of this Court as having put an end to this controversy. The District Court was right." 206 F. 2d at page 196.

In appellant's present expedition, he seeks specific enforcement of the agreement and "any and all other or additional rights and remedies to which he may be entitled". He argues that this suit is not controlled by our previous decisions, because his two previous actions were predicated upon a dealership agreement for handling appellee's farm implements, made in 1919, while this action rests upon such an agreement made in 1924.[1]

But the statements and admissions contained in appellant's brief demonstrate that the claimed agreement of 1924 was simply an assurance or affirmation given by some sales representatives of appellee that appellee would continue to live up to the terms and conditions of the 1919 agreement. In any event, however, whether the conversations which appellant claimed had occurred in 1924 amounted to the making of a renewal agreement rather than a reiteration as to the 1919 agreement, this agree-

[1] The basis of appellant's grievance against appellee was its allowing another local dealer to handle its farm-implement line.

ment would as much be subject to the legal effect and consequence of the provisions for termination as the original agreement had been and so would equally be possessed of —in the language of our first opinion, 185 F. 2d at page 482—"obvious congenital weaknesses which rendered it unenforceable."

In an effort to put an end to appellant's repetitive suits against it on the alleged contract, appellee has moved for leave to file in this Court a petition for a writ of injunction. No injunctive relief was sought by way of counterclaim in the District Court, nor has appellee otherwise undertaken to obtain from that Court any such protection. No controlling reason is apparent why, as against the normal prerogative and function of the District Court, we should be asked to entertain such a petition in original jurisdiction.

In addition, the elements of hearing that might be involved in relation to the issuing of a writ, and the incidents of enforcement that could become necessary from any granting of it are matters which a single-judge court manifestly would be in a position to deal with, from the standpoint of both parties, more routinely, expeditiously, conveniently and economically than we.

The motion for leave to file the petition for injunction is accordingly denied.

We therefore have not engaged in any examination of the merits of appellee's petition. It may not be inappropriate to add for appellant's benefit, however, in his lay status and his pro se representation, that the position which he has taken on the present appeal, as well as in relation to appellee's motion for leave to file its injunction petition, that he has the right to file as many lawsuits against appellee on the contract as he desires, and that the dismissal by the court of one suit upon the contract cannot at all operate to bar another, is not legally tenable. Under Rule 41 (b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., any involuntary dismissal of an action, other than a dismissal for lack of jurisdiction or for improper venue, operates legally as an adjudication upon

the merits of the claim, except where the dismissal order otherwise specifies.

The order dismissing appellant's action is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

(Judgment)

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 15666 — September Term, 1956.

Tuesday, May 7, 1957.

M. M. Meredith,

Appellant;

vs.

John Deere Plow Company of Moline, Illinois,

Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa; and on Motion of the appellee, John Deere Plow Company for leave to file petition for injunction against the appellant, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the motion of appellee for leave to file petition for injunction be, and it is hereby, denied.

And it is further Ordered and Adjudged by this Court that the Order of the said District Court in this cause dismissing the action of appellant be, and the same is hereby, affirmed.

May 7, 1957

Office Supreme Court, U.S.
FILED
JUL 26 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

No. 281

CIVIL

M. M. MEREDITH,

Petitioner and Appellant Below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL., A CORPORATION,

Respondent and Appellee Below.

RESPONDENT'S BRIEF RESISTING PETITION FOR CERTIORARI

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INDEX

Pages

Statement of Case 1

Summary of Points to be Argued and Authorities Relied On 2

Argument 6

Point I 6

Petitioner had his day in Court—No Constitutional Question Involved.

Point II 7

Judgments in First Suits of Meredith v. John Deere Plow Company of Moline are Res Judicata.

Point III 11

The Court May Take Judicial Notice of Record and Proceedings in First Suits.

Point IV 12

Since Substantive Law Applicable is that of Iowa—District Court and Circuit Court of Appeals Were Required to Follow the Law of that State.

Point V 14

Only in Exceptional Cases Does the Supreme Court Review Applying of Local Law by Lower Federal Courts. In such Cases Conflict Among Federal Circuit Courts Is Not of Itself a Reason for Granting a Writ of Certiorari.

Point VI 14

Circuit Court of Appeals Has Not in This Case Decided an Important Question of Fed

INDEX—Continued

	Pages
eral Law—It Was One of Applicable Substantive Law of Iowa.	
Point VII	15
Writs of Certiorari are only Granted under Special Circumstances and in Cases of General Importance.	
Appendix A	17

CASES CITED

American Viscose Corp. v. Rothensies (3 Cir.), 121 F. 2d 186, 188 ..... 3, 8

Angel v. Bullington, 330 U. S. 183, 192-193 ..... 3, 10

Aurora City v. West, 74 U. S. 82, 95-96 ..... 3, 8, 11

Brady v. Beams (10 Cir.), 132 F. 2d 985 ..... 4, 12

Busby v. Electric Utilities Employees Union, 323 U. S. 72 14

Claiborne-Reno Co. v. E. I. DuPont DeNemours & Co. (8 Cir.), 77 F. 2d 565 13

Cohen v. U. S. (8 Cir.), 129 F. 2d 733, 735, 736 ..... 4, 8

Curacao Trading Co., Inc., v. William Stake & Co., Inc. (D. C. S. D. Ia.), 89 F. Supp. 787 ..... 1, 2, 3, 6

DeBeaha v. Safe Deposit & Trust Co. of Baltimore, 233 U. S. 24, 32 ..... 4, 11

D. Del Vecchio v. Bowers, 296 U. S. 280, 285 ..... 5, 14

District of Columbia v. Pace, 320 U. S. 698, 702 ..... 5, 14

DuPont, E. I., DeNemours & Co. v. Claiborne-Reno Co. (8 Cir.), 64 F. 2d 224, Cert. denied 290 U. S. 646 13

CASES CITED—Continued

	Pages
Erie R. R. Co. v. Tompkins, 304 U. S. 64	4
Faulkner v. Des Moines Drug Co., 117 Ia. 120; 90 N. W. 585	5, 13
Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189	4, 8
Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258	6, 15
Heiser v. Woodruff, 327 U. S. 726, 735	3, 9
Kithcart v. Met. Life Ins. Co. (8 Cir.), 119 F. 2d 497	4, 12
Lee v. Federal Trade Com. (8 Cir.), 113 F. 2d 583, 585	3, 10
Lewis v. Minnesota Mutual Life Ins. Co., 240 Ia. 1249, 37 N. W. 2d 316	5, 13
Meredith v. John Deere Plow Company of Moline (D. C. S. D. Ia.), 89 F. Supp. 787	1, 2, 3, 6
Meredith v. John Deere Plow Company of Moline (8 Cir.), 185 F. 2d 481, Cert. denied 341 U. S. 936	1, 2, 3, 5, 7, 9, 11, 15
Meredith v. John Deere Plow Company of Moline (8 Cir.), 206 F. 2d 196, Cert. denied 346 U. S. 223	1, 3, 7, 9, 11
Meredith v. John Deere Plow Company of Moline 244 Fed. (2d) 9	2
National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498	6, 15, 16
Northern Pac. R. R. Co. v. Slaght, 205 U. S. 122, 130-131	3, 8, 14
Painter v. Hoffman, 318 U. S. 109	5, 14
Rohlin v. N. Y. Life Ins. Co., 304 U. S. 202	5, 14

CASES CITED—Continued

	Pages
State of Ohio ex rel Scney v. Swift & Co., 260 U. S. 146	15
Terre Haute Brewing Co. v. Dugan (8 Cir.), 102 F. 2d 425	13
United States v. Mousingwear, Inc. (8 Cir.), 178 F. 2d 204, 206-209 (affirmed 339 U. S. 36)	3, 10

Supreme Court of the United States

No. 281

Civil.

M. M. MEREDITH,

Petitioner and Appellant Below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL., A CORPORATION,

Respondent and Appellee Below.

RESPONDENT'S BRIEF RESISTING PETITION FOR CERTIORARI

STATEMENT OF CASE

This action is an attempt on the part of the petitioner to relitigate the matters and issues adjudicated against him in the two previous cases between the same parties (*M. M. Meredith v. John Deere Plow Company of Moline*) in the United States District Court for the Southern District of Iowa, Western Division, the first case reported in 89 Fed. Supp. 787, and in the same case on appeal in the United States Circuit Court of Appeals, 8th Circuit, reported in 185 Fed. 2d 481, and in which certiorari to the Supreme Court of the United States was denied in 341 U. S. 936. The second case is reported in 206 Fed. 2d 196

(8th Cir.) certiorari denied by the Supreme Court in 346 U. S. 223.

The substance and analysis of the complaint in the first case is set out in detail in the opinion of the trial court, reported in 89 Fed. Supp. 787, 788, and pertinent portions of it in the opinion of the Circuit Court of Appeals in 185 Fed. 2d 481, 482.

A summarized resume of the prior proceedings is to be found in the decision of the trial court in the case at bar (Rec. p. 11). For the convenience of the Court, a copy of the trial court's decision is included as Appendix "A" to this brief in resistance.

Additional reference to the various proceedings had will be found in *M. M. Meredith v. John Deere Plow Company of Moline, Illinois*, 244 Fed. 2d 9, which is the opinion of the United States Court of Appeals for the Eighth Circuit in case at bar.

Respondent believes that this sufficiently sets forth the facts to enable the Court to pass upon the petition for writ of certiorari herein without further encumbering this brief in resistance with a lengthy statement of the various pleadings and proceedings.

SUMMARY OF POINTS TO BE ARGUED AND AUTHORITIES RELIED ON BY RESPONDENT

I.

The petitioner has had his day in court and there is no constitutional question involved.

M. M. Meredith v. John Deere Plow Company of Moline, 185 Fed. 2d 481, cert. denied 341 U. S. 936.

M. M. Meredith v. John Deere Plow Company of Moline, 89 Fed. Supp. 787.

M. M. Meredith v. John Deere Plow Company of Moline, 206 Fed. 2d 196, cert. denied 346 U. S. 223.

II.

The judgments in the preceding suits of *Meredith v. John Deere Plow Company of Moline* (8 Cir.), 185 Fed. Rep. 2d 481, certiorari denied, 341 U. S. 936 and *Meredith v. John Deere Plow Company of Moline*, 206 F. 2d 196, cert. denied 346 U. S. 223, are "res judicata" as to the validity and enforceability and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff and petitioner in this suit.

Aurora City v. West, 74 U. S. 82, 95-96.

United States v. Munsingwear, Inc., 8 Cir., 178 F. 2d 294, 206-209 (affirmed 350 U. S. 36).

Northern Pacific Railway Co. v. Slaght, 205 U. S. 122, 130-131.

Angel v. Bullington, 330 U. S. 183, 192, 193.

Curacao Trading Co., Inc., v. William Stake & Co., Inc. (D. C. S. D. N. Y.), 61 F. Supp. 181, 184.

Heiser v. Woodruff, 327 U. S. 726, 735.

George H. Lee Co. v. Federal Trade Commission (8 Cir.), 113 F. 2d 583, 585.

Am. Viscose Corp. v. Rothensies (3 Cir.), 121 F. 2d 186, 188.

Cohen v. U. S. (8 Cir.), 129 F. 2d 733, 735, 736.

Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189.

III.

This case and the said preceding cases of *Meredith v. John Deere Plow Company of Moline* are so closely interwoven and so clearly interdependent that the Court may take judicial notice of the records and proceedings in the preceding suits.

DeBeers v. Safe Deposit & Trust Co. of Baltimore, 233 U. S. 24, 32.

Brady v. Beams, 10 Cir., 132 F. 2d 985.

Kithcart v. Met. Life Ins. Co., 8th Cir., 119 F. 2d 497.

IV.

Since the substantive law applicable to this case is that of Iowa, the District Court and Circuit Court of Appeals were required to follow the law of that State (*Erie R. R. Co. v. Tompkins*, 304 U. S. 64), which was and is as follows:

Under Iowa law, exclusive sales agency contract, terminable at will of agent, could be terminated by either party at will without incurring liability for damages to the other party.

Where one party to a contract is not bound to perform and can not be held liable for failure of performance, there is lack of mutuality and it is unenforceable.

If mutual promises are the mutual consideration of

a contract, each promise must be enforceable in order to render the other enforceable.

Lewis v. Minnesota Mutual Life Ins. Co., 240 Ia. 1249, 37 N. W. 2d 316.

Faulkner v. Des Moines Drug Co., 167 Ia. 120, 90 N. W. 585.

V.

Only in exceptional cases does the Supreme Court review applying of local law by lower Federal Courts. As to questions controlled by State law, conflict among Federal Circuit Courts is not of itself a reason for granting a writ of certiorari.

D. Del Vecchio v. Bowers, 296 U. S. 280, 285.

Palmer v. Hoffman, 318 U. S. 109.

District of Columbia v. Pace, 320 U. S. 698, 702.

Rublin v. N. Y. Life Ins. Co., 304 U. S. 202.

VI.

The Circuit Court of Appeals has not in this case "decided an important question of Federal law which has not been, but should be, settled by this Court." The question decided was one of substantive law of Iowa applicable to this case and which the Circuit Court of Appeals was required to follow, and the law of Iowa with respect to contracts of the type of that in suit conforms to the law which is generally applicable.

Meredith v. John Deere Plow Company of Moline, 8 Cir., 185 Fed. Rep. 2d 481.

VII.

Writs of Certiorari, to review judgment of the Courts of Appeal, are only granted under special circumstances, and such jurisdiction should be sparingly exercised, and only in cases of peculiar gravity and general importance, or to secure uniformity of decisions.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258.

State of Ohio ex rel Scheer v. Swift & Co., 260 U. S. 146.

National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498.

ARGUMENT

POINT I.

The petitioner has had his day in Court and there is no constitutional question involved.

Petitioner brought his first suit for $200,000.00 damages in the District Court of Cass County, Iowa, which was removed to the United States District Court for the Southern District of Iowa, Western Division. Upon motion of the defendant (respondent) filed in the United States District Court, the cause was dismissed for the reason that the complaint failed to state a claim against the defendant upon which relief could be granted. *Meredith v. John Deere Plow Company of Moline*, 89 Fed. Supp. 787.

The petitioner did not ask leave to amend his complaint. He appealed to the United States Court of Appeals, 8th Circuit, and that Court sustained the ruling of

the District Court. *Meredith v. John Deere Plow Company of Moline*, 185 Fed. 2d, 481.

Petitioner petitioned said Circuit Court of Appeals for a rehearing, claiming the issue of estoppel had been overlooked. Said request for rehearing was denied. The petitioner then filed in this Court his petition for writ of certiorari, which was denied May 21, 1951, 341 U. S. 936.

Thereafter, the petitioner filed an equity action, for an accounting, bottomed upon the same alleged contract as was declared upon in the first case, involving the same parties. Upon motion of defendant (respondent) filed in the said United States District Court, to dismiss the complaint of the plaintiff on the ground that it failed to state a claim against the defendant, upon which relief could be granted, which was sustained, the cause was dismissed. The petitioner did not ask leave to amend his complaint. He appealed to the United States Court of Appeals, 8th Circuit, and the Circuit Court sustained the ruling of the District Court. *Meredith v. John Deere Plow Company of Moline*, 206 Fed. 2d 196. Petitioner did not ask for a rehearing but on October 8, 1953, filed in this Court his petition for writ of certiorari, which was denied. 346 U. S. 223.

POINT II.

The judgments in the preceding suits of Meredith v. John Deere Plow Company of Moline are res judicata as to the validity and enforceability, and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff and petitioner in this suit.

Under Federal Rules of Civil Procedure, a motion to dismiss for failure to state a claim is the equivalent of a demurrer at common law; it admits for the purpose of the motion all well-pleaded facts of the complaint and not conclusions of either law or fact.

Caracas Trading Co., Inc., v. William Stake & Co. (S. D. N. Y.), 61 F. Supp. 181, 184.

Am. Visicot Corp. v. Rothensies (3 Cir.), 121 Fed. 2d 186, 188.

Cohen v. U. S. (8 Cir.), 129 Fed. 2d 733, 735, 736.

It is also settled that a judgment sustaining a general demurrer or motion to dismiss, based on the ground that the complaint does not state facts sufficient to constitute a cause of action, is an adjudication on the merits and bars another action on the same facts.

Aurora v. City of W. 3, 74 U. S. 82, 95-96.

No. Pac. R. Co. v. Slaght, 205 U. S. 122, 130-131.

Caracas Trading Co., Inc., v. William Stake & Co. (D. C. S. D. N. Y.), 61 F. Supp. 181, 184.

That is true not only when leave to amend is not granted, but a fortiori is granted and not availed of.

Caracas Trading Co., Inc., v. William Stake & Co., supra.

Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189.

No. Pac. R. Co. v. Slaght, supra.

The petitioner's complaint in the case at bar shows on its face that he had and claimed the right to terminate the agreement, arrangement, understanding or association at will (R7). It contains no allegations taking the case

out from under the rule that if mutual promises are the mutual consideration of the contract, each promise must be enforceable in order to render the other enforceable. There are no facts alleged showing any separate or additional consideration. The agreement, arrangement, understanding or association which the petitioner (plaintiff) now claims in the case at bar is enforceable against the defendant (respondent) is the same as that which was the subject matter of his complaints which were dealt with in the opinions of the 8th Circuit Court of Appeals in *Meredith v. John Deere Plow Company of Moline, Illinois*, 185 F. 2d 481 (cert. denied 341 U. S. 936, also in 206 Fed. 2d 196 (cert. denied 346 U. S. 223, and the parties are identical. It was held in each of those cases that the complaint was properly dismissed because the agreement upon which the plaintiff relied was not enforceable against defendant, being terminable at will. The decision and judgment in each of those cases is res judicata as to the validity and enforceability, and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff, the petitioner in this suit. The statement of this rule in the various cases will be sufficient argument in support of that proposition.

In the case of *Heiser v. Woodruff*, 327 U. S. 726, at page 735, the Court held that a Federal Court may not reject the salutary principle of res judicata which is founded upon generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and contested issue is decided against him, he may not later renew the litigation in another court.

Passing upon the question the Court said:

"In general a judgment is *res judicata* not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit."

The rule has been followed and adopted by the Eighth Circuit in the case of *George H. Lee v. Federal Trade Commission*, 113 Fed. 2d 583, page 585, in which the Court said:

"Where the underlying issue in two suits is the same, the adjudication of the issue in the first suit is determinative of the same issue in the second suit."

In *U. S. v. Munsingwear, Inc.*, 350 U. S. 36, 37, 39, the Court states the classic statement of the rule of res judicata as follows:

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

In *Angel v. Bullington*, 320 U. S. 183, 192-193, it was said in the opinion:

"The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. (Citing cases.) And it has gone through, if issues that were or could

have been dealt with in an earlier litigation are raised anew between the same parties."

To like effect are the holdings in *Aurora v. City of West*, 74 U. S. 82, 95-96; *No. Pac. Ry. Co. v. Slaght*, 205 U. S. 122, 130-1; *Caracao Trading Co., Inc., v. Wm. Stake & Co.* (D. C. S. D. N. Y.), 61 Fed. Supp. 181, 184, followed and approved by the Eighth Circuit Court of Appeals in its decision in the case at bar.

POINT III.

This case and the preceding cases of *Meredith v. John Deere Plow Company of Moline* (8 Cir.), 185 Fed. 2d 481, cert. denied 241 U. S. 936, and 206 Fed. 2d 196, cert. denied 346 U. S. 223, are so closely interwoven and so clearly interdependent that the Court may take judicial notice of the records and proceedings in the preceding suits.

In *DeBearn v. Safe Deposit & Trust Co. of Baltimore*, 233 U. S. 24, it was said in the opinion on page 32 of 233 U. S.:

> "We are not constrained by the limitations which the lower court considered prevented it from taking notice of the judicial proceedings in the courts of Maryland in which the attachments issued. We say this because, as was declared in Bienville Water Supply Co. v. Moline, 186 U. S. 212, 217, 46 L. Ed. 1132, 1134, 22 Sup. Ct. Rep. 820: 'We take judicial notice of our own records, and, if not *res judicata*, we may, on the principle of *stare decisis*, rightfully examine and consider the decision in the former case as affecting the consideration of this;' and again, as further declared in Dimmick v. Tompkins, 194 U. S. 540, 548, 48 L. ed. 1110, 1113, 24 Sup. Ct. Rep. 780: 'The court has the

right to examine its own records and take judicial notice thereof in regard to proceedings formerly had therein by one of the parties to the proceedings now before it." Availing of this power and making reference to the records of this Court, it appears that the controversy as to the validity of the attachments with which the appeal before us is concerned has, on three different occasions, been here considered."

This rule was recognized by the Circuit Court of Appeals for the Tenth Circuit in the case of *Brady v. Beams*, 132 Fed. 2d 985 (C. C. A. 10), in holding that the Circuit Court of Appeals can take judicial notice of the record on appeal from a judgment in a former action.

To like effect the Court of Appeals, 8th Circuit, held in the case of *Kithcart v. Metropolitan Life Insurance Company*, 119 Fed. 2d 497 (C. C. A. 8) that it would take judicial notice of pleadings and proceedings in the original lawsuit involved in that case.

In the case at bar, we have the same contract the subject-matter of the suit, in the same court, and the same parties, plaintiff and defendant, and the three cases are so closely interwoven and so clearly interdependent as to invoke the rule that the Court may take judicial notice in one suit of the proceedings in another suit; and in any event the Court may on the principle of stare decisis rightfully examine and consider the decisions of the former cases as affecting the consideration of this case.

POINT IV.

Since the substantive law applicable to this case is that of Iowa, the District Court and the Circuit Court of Appeals were required to follow the law of that State.

The law applicable was settled by the Supreme Court of Iowa in the case of *Lewis v. Minnesota Mutual Life Ins. Co.*, 240 Ia. 1249, 37 N. W. 2d 316, decided May 3, 1949 (same case 35 N. W. 2d 51).

The Supreme Court of Iowa in passing on that case was called upon to consider the effect of appointing plaintiff for life as agent of the defendant company and the right of termination of such contract by either party, and particularly whether the contract was unenforceable for lack of mutuality. In doing so, the Court reviewed the various cases previously decided by the Supreme Court of Iowa and other jurisdictions, including the U. S. Circuit Court of Appeals (8th Cir.) and followed and approved the holding in the case of *Faulkner v. Des Moines Drug Co.* (Iowa), 117 Ia. 120; 90 N. W. 585, *E. I. DuPont DeNemours Co. v. Claiborne-Reno Co.* (U. S. Cir. Ct. App. 8th Cir.), 64 F. 2d 224, *Terre Haute Brewing Co. v. Duggan* (C. C. A. 8 Cir. 102 F. 2d 425) and cases from other states, including Missouri, and held:

> "A contract will be construed to impose an obligation in perpetuity only when language of contract compels such construction.
>
> "Terms of contract must be complete and sufficiently definite to enable court to determine whether it has been performed and terms are not sufficiently definite unless court can determine therefrom the measure of damages in case of a breach.
>
> "An agreement appointing plaintiff for life as agent for life insurance Company, if established, would be no more than an indefinite general hiring terminable at will of either party, in absence of a consideration additional to services to be rendered by plaintiff.

"Where one party to a contract is not bound to perform it and cannot be held liable for failure of performance, there is a lack of 'mutuality' and contract is unenforceable.

"If mutual promises are the mutual consideration of a contract, each promise must be enforceable in order to render the other enforceable."

From the foregoing it is clear that the Circuit Court of appeals correctly interpreted and determined the law of Iowa to be that the agreement, arrangement, understanding or association which the petitioner claims in this suit is enforceable against the defendant (respondent) was not enforceable against the defendant because it was terminable at will.

POINTS V AND VI.

This Court has held several times that where lower Federal Courts are applying local law, the Supreme Court will not set aside their rulings except on the plain showing of error, and only in exceptional cases will the Supreme Court review the applying of local law by lower Federal Courts.

D. Del Vecchio v. Bowers, 296 U. S. 280, 285.

Palmer v. Hoffman, 318 U. S. 109.

District of Columbia v. Pace, 320 U. S. 698, 702.

Busby v. Electric Utilities Employees Union, 323 U. S. 72.

As to questions controlled by state law, conflict among Federal Circuit Courts of Appeal is not of itself a reason for granting a writ of certiorari.

In *Rublin v. N. Y. Life Ins. Co.*, 304 U. S. 202, it was held:

> "As to questions controlled by state law, conflict among Federal Circuit Courts of Appeal is not of itself a reason for granting a writ of certiorari by the Supreme Court of the United States, as the conflict may be merely corollary to a permissible difference of opinion in the state courts."

The Circuit Court of Appeals has not in this case "decided an important question of Federal law which has not been, but should be, settled by this Court." The question decided was one of substantive law of Iowa applicable to this case and which the Circuit Court of Appeals was required to follow, and the law of Iowa with respect to contracts of the type of that in suit conforms to the law which is generally applicable.

Meredith v. John Deere Plow Company of Moline, 8 Cir., 185 Fed. Rep. 2d 481.

POINT VII.

Writs of Certiorari, to review judgments of the Courts of Appeal, are only granted under special circumstances, and such jurisdiction should be sparingly exercised, and only in cases of peculiar gravity and general importance, or to secure uniformity of decisions.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258.

State of Ohio ex rel Seney v. Swift & Co., 260 U. S. 146.

National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498.

As pointed out by this Court in *National Labor Relations Board v. Pittsburgh S. S. Co.*, supra., Certiorari is granted only in cases involving principles, the settlement of which is of importance to the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between Courts of Appeal.

We submit that the case at bar is not one of peculiar gravity and general importance; the Circuit Court of Appeals has not in this case decided an important question of Federal law, which has not been, but should be, settled by this Court; it has not rendered a decision in conflict with another Court of Appeals on the same matter; it has determined that the law applicable is that of the State of Iowa, which it was obliged to follow; that in short the question involved was one of common law, which is not of great public interest. The Petitioner has presented no valid reason for the allowance of the writ of certiorari and it should be denied.

Respectfully submitted,

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APPENDIX A

(R11)

(Memorandum and Order of District Court sustaining Motion of Defendant to Dismiss and Dismissing Cause)

(Filed in U. S. District Court on August 7, 1956)

United States District Court
Southern District of Iowa
Western Division

M. M. Meredith, Plaintiff

vs.

John Deere Plow Co. of Moline, Ill., Defendant

This is the fourth action by the plaintiff against the defendant on the same general subject matter. The first was dismissed for failure of the complaint to state a claim upon which relief could be granted (89 Fed. Supp. 787) and that action was affirmed on appeal by the Eighth Circuit (185 F. 2nd 481). The second was, likewise, dismissed for failure of the complaint to state a claim upon which relief could be granted (the Federal District Court's opinion is unreported) and that action was again affirmed by the Eighth Circuit (206 F. 2nd 196). Certiorari was applied for and denied by the Supreme Court in each of those cases (341 U. S. 936 and 346 U. S. 223). The third complaint (No. 1-216 in the District Court for the Southern District of Iowa) involved the same subject matter and, after the overruling of the motion to remand to the State court from which removed, was dismissed by the plaintiff January 13, 1956.

This action, the fourth one, was commenced in the Southern District of Illinois, Northern Division, and, on motion of defendant under Section 1404 (a), Title 29, U. S. C., was transferred to this Court.

Defendant has filed a motion to dismiss for failure of the complaint to state a claim upon which relief can be granted, and a motion to strike the complaint as redundant and immaterial and violative of Rules 8 and 10 of the Federal Rules of Civil Procedure, and, in the alternative, a motion for a more definite statement. These are the matters now before the Court, which, as well as the briefs of the parties, have been fully considered.

Even without the fortification of the prior decisions, it is crystal clear that this complaint attempts, by way of assumption and conclusion, to allege a contract (and its breach) that is void and unenforceable for (1) uncertainty, (2) lack of mutuality, and (3) because expressly, as alleged, terminable at will. Hence, the complaint fails to state a claim upon which relief could be granted.

It Is Therefore Ordered By The Court, that defendant's motion to dismiss be, and is hereby, sustained and this action is dismissed. Done at Des Moines, Iowa, this 7th day of August, 1956.

CHARLES E. WHITTAKER,
United States Circuit Judge
(By Assignment)